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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,127	08/11/2006	Bernard Boursier	0600-1070	5770

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EXAMINER	
TRAN LIEN, THUY	
ART UNIT	PAPER NUMBER
1789	

NOTIFICATION DATE	DELIVERY MODE
07/22/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

Office Action Summary	Application No.	Applicant(s)	
	10/589,127	BOURSIER ET AL.	
	Examiner	Art Unit	
	LIEN T. TRAN	1789	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 July 2011*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *7-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *7-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Claims 7-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brendel et al in view of the article in the " Journal of the Chinese Cereals and Oils Association".

Brendel et al disclose a method of making a baked product comprising the steps of forming a dough containing gluten, 60% water, 6.5% branched maltodextrins and .013% amylase, Kneading the dough, proofing the dough and baking the dough to form a baked product which is a bread. The branched maltodextrins have 15-35% 1-6 glucoside linkages, a reducing sugar content of less than 20% and a number average molecular mass of at most 4500g/mol. (see example 6 and paragraph 0018)

Brendel et al do not disclose reducing agents as claimed and the baked product is brioche or a hamburger roll.

The Brendel et al dough contains wheat flour which contains gluten and also wheat gluten; thus, it is a dough containing gluten. The branched maltodextrins in Brendel have the same characteristics as claimed; thus, it inherently has the same molecular weight.

The article in the Journal teaches that different oxidizing agents can be used. Some common oxidizing agents include bromates, iodates, calcium peroxide etc.. Different oxidizing agents show different oxidation speeds in dough . The appropriateness of the speed of oxidation has very great effects on the workability of the dough and the quality of the bread. The article also teaches that reducing agents such as cysteine, glutathione, and sulphite are used in dough to react with disulphide bridged

bonds, reducing the degree of cross-linking of proteins and thus shortening the kneading time and raising the workability of the dough.

It would have been obvious to make the bread such as hamburger roll, brioche if such configuration is wanted for the bread; this would have been an obvious matter of preference. One example in Brendel et al shows the use of ascorbic acid; however, it is well known the art that other oxidizing agents are also commonly used in dough. For example, bromate is a commonly used oxidizing agent for dough. Thus, it would have been obvious to one skilled in the art to use other oxidizing agent as substituting one known agent for another to perform the same function. Different oxidizing agents show different oxidation speeds; thus, it would also have been obvious to select different agents depending on the speed desired. It would have been obvious to add a reducing agent as taught in the article to obtain the benefits disclosed. Using an additive for its art-recognized function would have been obvious to one skilled in the art. Since reducing agent is commonly used in dough, it would have been within the skill of one in the art to determine the amount through routine experimentation.

Claims 7-8,11-12,14-15,18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kilibwa (6217930) in view of the article in " Journal of the Chinese Cereals and Oils Association".

Kilibwa discloses a method of making baked good. The method comprises the steps of forming a dough comprising wheat flour, bulking agents such as polydextrose in amount of 2-15% and water in amount of up to about 25%, kneading the dough and

baking the dough to form baked products including rolls, bread, pizza etc.. (see columns 5-6)

Kilibwa does not disclose the use and amount of reducing agent as claimed and the baked product is a brioche or hamburger roll.

The article teaches that reducing agents such as cysteine, glutathione, and sulphite are used in dough to react with disulphide bridged bonds, reducing the degree of cross-linking of proteins and thus shortening the kneading time and raising the workability of the dough.

It would have been obvious to add a reducing agent as taught in the article to obtain the benefits disclosed. Using an additive for its art-recognized function would have been obvious to one skilled in the art. Since reducing agent is commonly used in dough, it would have been within the skill of one in the art to determine the amount through routine experimentation. The Kilibwa dough is a gluten containing dough because it contains wheat flour which has gluten. It would have been obvious to make the roll as hamburger roll when desiring such product. This would have been an obvious matter of preference.

Claims 9-10,13,16-17,20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kilibwa in view of the article in " Journal of the Chinese Cereals and Oils Association as applied to claims 7-8,11-12,14-15,18-19 above, and further in view of Brendel et al (2002/0192344)

Kilibwa does not disclose the use of branched maltodextrin having the characteristics as claimed.

Brendel et al disclose a process for preparing a low-calorie food. The low-calorie food is made by replacing the high-calorie substances such as fat, maltodextrin, dextrose etc.. with a branched maltodextrin having between 15-35% 1-6 glucoside linkages, a reducing sugar content of less than 20% and Mn of at most equal to 4500g/mol. The branched maltodextrin is used in any food usually containing high-calorie substances. (see paragraphs 0021, 0028)

Kilibwa teach to use bulking agent including maltodextrin or polydextrose in amount 2-15%. It would have been obvious to one skilled in the art to replace the maltodextrin or other bulking agent in the Kilibwa product with the branched maltodextrin taught by Brendel et al when desiring to make low-calorie product. Brendel et al teach high calorie substances such as regular maltodextrin and dextrose can be replaced with branched maltodextrin to make a low calorie product.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir.

1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 7-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 of copending Application No. 11/993025. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications are directed to methods for producing baked products containing improving agent selected from branched maltodextrin, pyrodextrin and polydextrose. The difference resides in the addition of resistant starch or gum as fiber source in the copending case. However, this difference is not patentably significant because the addition of fiber to baked product and the use of resistant starch and gum as fiber source are well known. It would have been obvious to add resistant starch or gum as fiber material to the baked product when desiring to increase the fiber content of the baked product or to make a fiber-enriched product. The proportion of fiber material can vary depending on the fiber content wanted.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

In the response filed 7/8/11, applicant submits a declaration to show that the addition of reducing agent has an effect on the quality of the baked product and it would not have been obvious to add a reducing agent to a known formulation with an expectation of success. This argument is not persuasive and the declaration is not persuasive. The declaration shows that formulation D which differs from formulation A by the addition of cysteine gives a sticky dough and the length increase in shaping of the brioches cannot be measured. However, the difference between formulation A and D is not only in the presence or absence of the cysteine. Formulation D contains more flour and less butter. The kneading time between formulation D and A is also different; thus, one cannot conclude with 100% certainty that the difference in dough stickiness between D and A results solely from the cysteine. Also, the declaration is limited to brioche and the baked product claimed is not limited to brioche. The showing in one product with one example is not sufficient to draw a general conclusion that the addition of cystein has an impact on the quality of the baked product. Reducing agent is known to be used in baked products as shown by the article. The declaration also shows that formulation B which contains both improving agent and cysteine gives shorter kneading time than formulation E which does not contain cysteine. This showing is not unexpected because the article teaches that the use of reducing agent shortens kneading time. The declaration does not address the rejection because the both the Brendel and Kilibwa teach the use of the claimed improving agent in baked product. The addition of the reducing agent would have been obvious in view of the teaching of the article. Thus, any unexpected result obtained from the use of the two agents will

inherently be present in the prior art product. Even without knowing anything about the improvement in volume, one would still be motivated to use the two agents for the reasons taught in the prior art.

The double patenting rejection is maintained because the instant application is rejectable on other grounds.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LIEN T. TRAN whose telephone number is (571)272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Humera Sheikh can be reached on 571-272-0604. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

July 18, 2011

/LIEN T. TRAN /

Primary Examiner, Art Unit 1789